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CMA No. 1652 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1652 of 2022
and
C.M.P. No. 12289 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem Division.

... Appellant

Versus

1.Periyammal

2.Minor Praveen

3.Minor Muthu

(Minors rep. by their guardian/NF/ mother)

4.Iyyakannu

5.Periyammal

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the decree and Judgment dated 23.11.2021 made in M.C.O.P. No. 292 of 2019 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Villupuram @ Kallakurichi.

For Appellant : Mr. D. Nitin.

For Respondents : Mr. P. Anbazhagan for R1 to R5.

J U D G M E N T



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The appeal has been filed by the appellant challenging the award passed by the Tribunal in M.C.O.P. No. 292 of 2019 dated 23.11.2021.

2.The respondents had filed a claim petition before the Tribunal stating that on 20.06.2019, while the deceased was riding his two wheeler bearing Registration No.TN 77 F 0608 on the left side of Salem – Vridhachalam main road near V.Krishnapuram Anjaneyar Temple, a bus bearing Registration No.TN 30 N 1818 belonging to the appellant driven by its driver in a rash and negligent manner dashed the deceased, as a result of which the deceased sustained severe injuries and died on the spot.

3.The appellant filed counter denying all the averments made in the claim petition stating that; the accident occurred only due to the rash and negligent riding of the deceased; that since the deceased had ridden his motorcycle in a rash and negligent manner, he hit another two wheeler which was proceeding on the same direction and thus, lost balance and dashed the bus belonging to the appellant which was proceeding from the opposite direction; that the deceased did not possess valid driving license and did not wear helmet at the time of accident; and that the appellant is



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not liable to pay compensation to the respondents; and that the claim petition is bad for non-joinder of the necessary parties; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

4. The respondents examined three witness as PW1 to PW3 and marked Ex.P.1 to Ex.P.21. On the side of the appellant, the driver of the bus has been examined as RW1 and marked Ex.R1 and Ex.R2.

5.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the appellant. Though the Tribunal arrived at a sum of Rs.16,92,000/- as compensation, due to total mistake, directed the appellant to pay a sum of Rs.16,72,000/- as compensation to the respondents at the first instance and recover the same from the first respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.

6.The learned counsel for the appellant submitted that the driver of the appellant corporation was examined as RW1 to show that the



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accident took place only due to the negligence of the deceased. The manner in which the accident took place also confirms the said fact.

Ex.P.2, final report of the police corroborate the evidence of RW1. According to the appellant, when the deceased attempted to overtake another two wheeler, he had rammed into the said two wheeler lost balance fell on the backside of the bus as a result of which the rear tire of the bus ran over the deceased. Therefore, the Tribunal was wrong in fixing the entire negligence on the driver of the bus belonging to the appellant. The evidence adduced before the Tribunal shows that the deceased contributed to the accident and ought not to have fixed the entire negligence on the driver of the bus and prayed for allowing the appeal.

7.Per contra, the learned counsel for the respondents submitted that the Tribunal had rightly accepted the evidence of PW2 and PW3, eye witnesses to the occurrence whose evidence is clear and cogent. Both the eye witnesses have stated that the accident took place only on account of the rash and negligent driving by the driver of the bus belonging to the appellant. The learned counsel submitted that the award of the Tribunal is meagre though they had not filed any appeal against the quantum of



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compensation. The learned counsel further submitted that the Tribunal had only awarded Rs.1,00,000/- towards loss of love and affection and that the respondents 2 to 5 are entitled to Rs.40,000/- each. The notional income fixed by the Tribunal is also meagre. Therefore, the learned counsel submitted that the respondents are entitled for enhancement of compensation amount.

8.The questions that arise for consideration in the instant appeal are;

- (i) Whether the Tribunal was right in fixing the entire negligence on the driver of the offending vehicle namely the bus?
- (ii) Whether the compensation awarded by the Tribunal is just and reasonable?

9.(i)From the materials on record, this Court finds that the respondents have examined PW2 and PW3, eye witnesses to the occurrence who deposed that the accident took place due to the rash and negligent driving by the driver of the offending vehicle. PW2 had stated in his evidence that the deceased had ridden the two wheeler in a careful manner and was wearing helmet; that the driver of the bus belonging to



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the appellant came from behind in a rash and negligent manner dashed the deceased and hence was responsible for the accident. The evidence of PW3 corroborates the above version. Both the witnesses have denied the suggestions stating that the rider of the two wheeler was responsible for the accident. RW1 driver of the bus belonging to the appellant had stated that he had driven the vehicle carefully on left hand side of the road and the deceased attempted to overtake another two wheeler and rammed into the said two wheeler lost balance and fell on the bus and hence, he was not liable for the accident. The appellant marked Ex.R2 final report of the police which shows that the FIR against RW1 was closed since it was found that the deceased was responsible for the accident.

9.(ii) This Court on perusal of the evidence adduced on either side and the final report filed by the police before the Jurisdictional Magistrate filed by the appellant, finds that the rear wheel of the bus had run over the deceased which indicates that it was not a head on collision. The rough sketch has not been marked by both the sides to show the exact place of the accident. The evidence of RW1 indicates that the negligence on the rider of the two wheeler cannot be ruled out. The rider of the two wheeler has certainly contributed to the accident and fell on the bus.



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However, the entire negligence cannot be fixed on the rider of the two wheeler also as the bus driver ought to have been careful while driving.

In the facts and circumstance of this case, this Court is of the view that it would be just and reasonable to fix 40% contributory negligence on the deceased and 60% contributory negligence on the driver of the bus belonging to the appellant.

10.As regards the quantum, the Tribunal had fixed the notional income of Rs.7,500/- per month though the respondents had stated that he was working as a Mason at the time of accident. The deceased was survived by his wife and two minor children and parents. Considering the age of the deceased, avocation and year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.12,000/- per month as notional income for the deceased. Since the deceased was 33 years at the time of the accident, the respondents are entitled to 40% enhancement towards future prospects and the multiplier applicable is 16. Since there are five dependents, $1/4^{\text{th}}$ has to be deducted towards personal expenses. Hence, the loss of income would be Rs.12,000/- + Rs.4,800 (40% of Rs.12,000) = Rs.16,800/- X 12 X 16 X $3/4$ = Rs.24,19,200/-. The respondents 2 to 5 are entitled to Rs.40,000/- each under the other



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head loss of love and affection and thus, Rs.1,00,000/- awarded by the Tribunal is enhanced to Rs.1,60,000/-. The award of Rs.25,000/- towards funeral expenses is on the higher side and the same is reduced to Rs.15,000/-. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	15,12,000	24,19,200	Enhanced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral expenses	25,000	15,000	Reduced
5.	Loss of Love and Affection	1,00,000	1,60,000	Enhanced
	Total	16,92,000	26,49,200	
	40% Contributory Negligence on the deceased	---	10,59,680	
	Net Compensation after deducting 40% contributory negligence on the deceased		15,89,520 rounded off to 15,89,600	Reduced by Rs.82,400/- [16,92,000 – 15,89,600]

Though the Tribunal arrived at a sum of Rs.16,92,000/- as compensation, by mistake, it has awarded a sum of Rs.16,72,000/- as compensation to the respondents.



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11. With the above modification, this Civil Miscellaneous Appeal is

partly allowed and the compensation awarded by the Tribunal at Rs.16,72,000/- is hereby reduced to Rs.15,89,600/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of two (2) weeks from the date of a receipt of copy of this Judgment at the first instance and recover the same from the first respondent. On such deposit, the respondents 1, 4 and 5 are permitted to withdraw their respective shares on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor respondents 2 and 3 are directed to be deposited in the interest bearing Fixed Deposit in any of the nationalized bank till they attain the age of majority and the first respondent is permitted to withdraw the accrued interest once in three months. The appellant / Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P. No. 292 of 2019, if the entire award amount has already been deposited by them. Consequently, the connected Miscellaneous petition is closed. No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Kallakurichi.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

C.M.A. No. 1652 of 2022
and
C.M.P. No. 12289 of 2022



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